

Decision **DRAFT DECISION OF ALJ BARNETT** (Mailed 6/17/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Verification, Consolidation and Approval of
Costs and Revenues in the Transition Revenue
Account.

Application 98-07-003
(Filed July 1, 1998;
Petition for Modification of
Decision 99-06-058, filed
July 10, 2001).

**OPINION MODIFYING D.99-06-058, AND GRANTING
PETITION TO LIMIT THE SCOPE OF THE PX CREDIT AUDIT**

In Decision (D.) 99-06-058 the Commission ordered an audit of the Power Exchange energy credits (PX credits) of Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). An audit was deemed necessary to insure that the PX credit on a direct access customer's bill was accurate. We provided for its eventual termination, should circumstances change.

SCE, PG&E, and SDG&E (Petitioners) seek modification of D.99-06-058, to the extent that the audit of Petitioners' PX credit calculations to a review of those PX credit calculations in year 2000. Responses to the petition were filed by New West Energy Corporation (New West), AES NewEnergy, Inc. (AES), the Alliance for Retail Energy Markets (AReM), the Western Power Trading Forum (WPTF), and Enron Corp. (Enron). Enron later withdrew. AES supports the petition.

The PX credit audit stemmed from the settlement of a dispute in the 1998 Revenue Adjustment Proceeding (RAP), when certain intervenors advocated that the Commission require that: 1) the utility distribution companies (UDCs) publish all of the inputs used to compute the PX credit, and in particular,

the invoices that they receive from the Power Exchange; or alternatively, that 2) a neutral, non-utility party compute the PX credit; and 3) the UDCs modify their direct access tariffs to eliminate the so-called “zero minimum bill.”

During negotiations which resulted in a stipulation regarding the PX credit, PG&E submitted a “PX Credit Auditing Proposal.” The WPTF supported the idea of a PX credit audit generally, but asserted that the existing PX credit audit proposal was only a “small step in the right direction.” In particular, WPTF asserted that the Commission should be involved in the choice of the auditor and that the audit itself should: (1) include the Commission in the consultative process; (2) authorize all market participants to obtain copies of each audit report; (3) clearly provide a mechanism to adjust for past, present, and future errors in PX credit calculations; (4) allow parties to challenge the algorithms underlying the PX credit calculations; and (5) designate who will bear the cost of the audit.

As a compromise, the utilities and WPTF entered into a stipulation regarding the audit. The stipulation required the Commission to form a committee of representatives of the three utilities and three energy service providers (ESPs). The committee was charged with developing a request for proposal (RFP) and evaluating bid proposals culminating in the creation of a list of qualified auditors, from which the Commission would choose a firm to audit the utilities’ PX credits. The procedure was approved by the Commission in the 1998 RAP, D.99-06-058.

The Commission formed the PX audit selection committee (Committee) in July 1999. The Committee consists of representatives of SCE, PG&E, and SDG&E and three energy service providers (APS Energy Services, New Energy, and Seattle City Light). The Committee presented its list of potential auditors to the

Commission in January 2000, which selected the Barrington-Wellesley Group (BWG) as the auditor. SCE signed a contract with BWG on behalf of the other two utilities of more than \$1.5 million to conduct the audit. The contract expired on September 19, 2001. BWG began its review of the monthly calculations in early 2000. BWG had issued audit reports to participating utilities for April, May, and June 1998 and for all of year 2000 that were posted on the CPUC website. To date, there have been only a few minor variances identified by BWG in the monthly reports.

Since the start of the audit in early 2000, there have been dramatic changes in the California energy markets. As a result of skyrocketing wholesale energy prices, which the utilities were unable to continue to pay, the PX closed in January 2001. Because energy prices jumped from approximately \$30/megawatt-hour (MWh) to as high as \$1,700/MWh (with prices averaging about \$300/MWh), SCE's costs, for example, exceeded revenues from June 2000 through the end of the year. PG&E has filed for bankruptcy protection and SCE is in difficult financial straits. The financial situation of the utilities militates against a full-scale audit; certainly ratepayers should not have to pay for it. All three utilities and the three ESP members of the Committee agree that the audit should be limited to an audit of year 2000 PX credits only.

Petitioners assert that there are significant new facts which warrant a modification of the 1998 RAP decision. They point out that the PX credit audit was based on electric ratemaking as it existed in 1999. At that time, all of the output of the utilities' retained generation was sold into the PX markets and utilities' customers' energy needs were primarily supplied by purchasing power from the PX or the Independent System Operator. Direct access customers were given credits on their bill for the energy which the utilities avoided purchasing

for them. Direct access was expanding and California was looking toward a restructured and deregulated electricity services market. This is no longer the case. The PX dissolved in January 2001, and with the demise of the PX, there is no obvious spot market for buying and selling energy. Limiting the scope of the audit to Year 2000 entries will reduce work and cost.

Petitioners state that the PX credit audit selection Committee supports a modification of the audit. Attached to the Petition are declarations from all of the ESP members of the Committee. The Committee agrees that the most efficient use of the audit resources would be for BWG to focus solely on reviewing the monthly calculations during 2000. The review of 2000 prices is still important to the ESPs because of issues during that period which may impact PX credit calculations for PG&E and SCE. The Committee agrees with the recommendation that the Commission modify the scope of the PX credit audit to limit it to the remaining monthly calculations during 2000 (September-December) that have not already been audited.

WPTF and AReM argue that the utilities cannot petition to modify D.99-06-058 without first negotiating changes to the stipulation with WPTF. This argument contradicts the express language of D.99-06-058 which states:

We find that this procedure should continue until and unless the Commission directs otherwise and with the understanding that the process for calculating the PX credit may change or be eliminated. (*Id. mimeo.*, at p. 29.)

When we adopted the parties' stipulation regarding the information to be audited and the procedure for choosing the auditor, we reserved the discretion to determine how long the audit would last. That determination is affected by changes in, or the elimination of, the PX credit. The duration of the audit is affected by significant new facts or material changes in conditions. In D.99-06-058,

Conclusion of Law 8 states: “the Commission should adopt the stipulation of applicants and WPTF to conduct independent audits of PX credit calculations.” The PX shut down in January 2001; there is no longer a PX credit to audit.

AReM argues that the utilities and ESPs are “competitors” and it is therefore necessary for some outside entity or mechanism to be used to monitor the UDCs’ calculation of bills for DA customers. AReM’s characterization of ESPs as competitors of the UDC is disputed by the UDCs, but whether or not they are competitors the PX credit calculation is not the same as “calculation of bills for DA customers.” If AReM feels that the UDCs are not accurately billing DA customers AReM may pursue its legal remedies.

New West recognizes that the alternate methods the UDCs use to compute the DA credit are comprised of tariff generation rate components, but contends that they “deserve some sort of similar oversight or analysis as that originally afforded to Schedule PX.” Petitioners respond that tariffed generation rate components are already scrutinized by the Commission, through the exhaustive review given the applications which set those rates, and approval of advice letters and associated tariffs.

In light of the significantly changed circumstances, we conclude that it serves no practical purpose to continue to audit credits calculated under an abandoned system and tied to a failed restructuring plan, beyond those already audited and remaining Year 2000 entries. It is difficult to see what additional oversight is required, or why that oversight should be ceded to outside auditors.

Comments on Draft Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(1) and Rule 77.1 of the Rules of Practice

and Procedure. Comments were filed on_____, and reply comments were filed on _____.

Findings of Fact

1. The PX suspended operations in January 2001.
2. There is no longer a PX credit.
3. There is no practical purpose to continue to audit credits calculated under an abandoned system.
4. The PX credit audit should be limited to the year 2000.
5. When the audit for year 2000 is completed, the audit should be terminated.

Conclusion of Law

1. The Petition for Modification of D.99-06-058 should be granted, as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 6 of Decision 99-06-058 is modified as follows:
 6. The stipulation filed March 11, 1999, by PG&E, Edison, SDG&E and Western Power Trading Forum regarding audits of utility PX calculations is adopted but limited to a review of Year 2000 PX credits after which the audit will terminate.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.